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<p>1 A. Today it's available throughout the</p> <p>2 network, Maine to Florida, on the teller system</p> <p>3 and on the platform system.</p> <p>4 Q. Okay.</p> <p>5 A. As a standard business practice we</p> <p>6 direct them to the CSR, to the platform because</p> <p>7 it's not a quick and dirty transaction to load the</p> <p>8 card. Tellers are for like those -- make a</p> <p>9 deposit.</p> <p>10 Q. Sure.</p> <p>11 A. But if the volume is so high, they</p> <p>12 can service the customer as a convenience at the</p> <p>13 teller line.</p> <p>14 Q. But if I get in my car tonight and I</p> <p>15 go home and I run through Marlton, and assume I'm</p> <p>16 a depositor, and I go to the drive-in window, can</p> <p>17 I get a card from her?</p> <p>18 A. No. We don't sell them at the</p> <p>19 drive-through. You got to ID the customer.</p> <p>20 Q. Well, she knows who I am.</p> <p>21 A. She won't have access to the vault</p> <p>22 tonight. The vault closes.</p> <p>23 Q. 2:00 tomorrow afternoon?</p> <p>24 A. She would tell you to come inside, I</p>	<p>1 A. Partially, yes.</p> <p>2 Q. What does that -- how long is that</p> <p>3 and what does it entail other than what you just</p> <p>4 told me, if anything?</p> <p>5 A. So the new program is a combined</p> <p>6 training program. I think it runs I want to say</p> <p>7 nine to ten days. Some is online training which</p> <p>8 they can do at their individual location, and then</p> <p>9 there's days actually spent at the universities to</p> <p>10 learn specific segments of the training, you know,</p> <p>11 the system, learn the system, and during the</p> <p>12 training, it's also customer experience training,</p> <p>13 how do we treat customers.</p> <p>14 Q. Is this TD University?</p> <p>15 A. It's now TD University.</p> <p>16 Q. And is that just in Marlton or you</p> <p>17 got one in Florida?</p> <p>18 A. We have one in Florida. One in</p> <p>19 Maine.</p> <p>20 Q. So every TD Bank customer service</p> <p>21 representative and teller, when they're hired, is</p> <p>22 going to go to one of those three places for</p> <p>23 training?</p> <p>24 A. Oh, there's, I think, seventeen</p>
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<p>1 believe. I believe.</p> <p>2 Q. Okay. So you talked about each year</p> <p>3 you relaunch the program, and you told me that</p> <p>4 you're not sure if a new employee training it's</p> <p>5 covered at this point. So other than the relaunch</p> <p>6 each holiday season, is there any ongoing training</p> <p>7 that you're aware of other than that for</p> <p>8 gift cards?</p> <p>9 A. Well, there's ongoing training for</p> <p>10 new hire employee whether or not they're in a</p> <p>11 formal training classroom or there's stuff that's</p> <p>12 done at the store.</p> <p>13 Q. Okay.</p> <p>14 A. So as a new hire you're on boarded on</p> <p>15 everything.</p> <p>16 Q. In other words, trained?</p> <p>17 A. Trained, yeah. Uh-huh. So classroom</p> <p>18 training is specific to sales of checking,</p> <p>19 savings, et cetera, and then there's ancillary</p> <p>20 products like a gift card or the Penny Arcade that</p> <p>21 you would do training in-store with your assistant</p> <p>22 manager or head teller or store manager.</p> <p>23 Q. You mentioned classroom training. Do</p> <p>24 all your new employees have classroom training?</p>	<p>1 campuses altogether.</p> <p>2 Q. Oh, okay.</p> <p>3 A. Yeah.</p> <p>4 Q. All right.</p> <p>5 A. They will go to some formal classroom</p> <p>6 training within their first so many weeks of hire.</p> <p>7 Q. And any one of them is not too far</p> <p>8 away, the formal training class.</p> <p>9 A. That's the hope.</p> <p>10 Q. Okay. What are the goals that you</p> <p>11 know of of in-store training with regard to</p> <p>12 gift card sales?</p> <p>13 A. Repeat the -- explain what you mean,</p> <p>14 the goals.</p> <p>15 Q. Well, each year there's a training</p> <p>16 session at the very least as you re-roll out the</p> <p>17 program during the holiday season. What's the</p> <p>18 overall goal of that training session?</p> <p>19 A. Oh, to make sure that they provide a</p> <p>20 good experience to the customer, a WOW experience,</p> <p>21 make sure they have a knowledge base of the</p> <p>22 product, the in's and out's of the product, and</p> <p>23 then systematically how to sell the product.</p> <p>24 Q. Do the various branches compete for</p>

<p style="text-align: center;">Page 198</p> <p>1 prizes for most gift cards sold?</p> <p>2 A. There is no official prize.</p> <p>3 Q. What does that mean?</p> <p>4 A. We don't give them anything if they</p> <p>5 sell more gift cards, if that's what you're</p> <p>6 asking.</p> <p>7 Q. Okay.</p> <p>8 A. There's a lot of competition in this</p> <p>9 company from one market to another, so they will</p> <p>10 gloat that they sold more cards, but there's no</p> <p>11 official prize.</p> <p>12 Q. Is there an unofficial prize?</p> <p>13 A. No. I'm just saying it's their</p> <p>14 bragging rights, that's the unofficial prize.</p> <p>15 Q. Okay. Anything other than bragging</p> <p>16 rights.</p> <p>17 A. No.</p> <p>18 Q. I mean I got Branch -- I got</p> <p>19 District 4 and I sold fifty million dollars and</p> <p>20 District 2 -- and every other district sold one</p> <p>21 million dollars, I don't get anything?</p> <p>22 A. No.</p> <p>23 Q. Do you incentivize your employees,</p> <p>24 individual employees to help them and reward them</p>	<p style="text-align: center;">Page 200</p> <p>1 tellers in stores, and I don't know that it's</p> <p>2 included in there as one of the widgets of sales.</p> <p>3 I don't know if gift card's included. I don't</p> <p>4 think it is, but I don't want to be -- I'm not a</p> <p>5 hundred percent sure.</p> <p>6 Q. Okay. Do you know a Marc Sieben?</p> <p>7 A. No.</p> <p>8 Q. Commerce Capital Markets.</p> <p>9 A. No.</p> <p>10 Q. Do you have an understanding of</p> <p>11 records -- where records would be kept or who</p> <p>12 would keep gift card sales records?</p> <p>13 A. Well, it's systemic. I mean it's</p> <p>14 done on the system, so there's not really paper</p> <p>15 records.</p> <p>16 Q. I understand that, but would it be --</p> <p>17 would I be likely to find it in accounting, in</p> <p>18 sales, in marketing?</p> <p>19 A. Technology.</p> <p>20 Q. And are the -- would you have an</p> <p>21 understanding as to whether or not gift card sales</p> <p>22 records would be kept by region or by -- or not?</p> <p>23 A. I mean I have reports of sales by</p> <p>24 region, but I don't have individual sales by</p>
<p style="text-align: center;">Page 199</p> <p>1 for gift card sales?</p> <p>2 A. No.</p> <p>3 Q. Do you incentivize -- do you</p> <p>4 understand what I mean --</p> <p>5 A. Yeah.</p> <p>6 Q. -- when I say incentivize?</p> <p>7 Do you incentivize -- what do I</p> <p>8 mean -- what is your understanding of that term?</p> <p>9 A. That there's some compensation for</p> <p>10 selling gift cards.</p> <p>11 Q. Do customer service representatives</p> <p>12 get incentivized based upon their production,</p> <p>13 overall production, not just with gift cards?</p> <p>14 A. Oh, yes.</p> <p>15 Q. And is gift card production part of</p> <p>16 that overall production?</p> <p>17 A. Currently I do not believe it is.</p> <p>18 Q. Has it been in the past?</p> <p>19 A. No. My question is whether or not it</p> <p>20 is currently. I know it hasn't in the past.</p> <p>21 Q. Okay. And why do you question --</p> <p>22 what is it that you makes you question that?</p> <p>23 A. Because we have a new total</p> <p>24 compensation package for the front line, for the</p>	<p style="text-align: center;">Page 201</p> <p>1 region. We talked about, earlier, volume of</p> <p>2 sales.</p> <p>3 Q. Yeah, right. Which is total number.</p> <p>4 A. So Marlton sold 2,400. This one sold</p> <p>5 500. And then you could get it regionally since</p> <p>6 these twelve stores are in a region, it rolls up.</p> <p>7 But that's just number of sales, not individual</p> <p>8 sales.</p> <p>9 Q. I understand that. I'm just trying</p> <p>10 to understand who keeps them and how they're kept.</p> <p>11 Do you get breakdowns or do you know if breakdowns</p> <p>12 are gotten with regard to the denominations of</p> <p>13 sales? There's, you know, 80 percent of them are</p> <p>14 \$25 gift cards, 1 percent are \$500 gift cards?</p> <p>15 A. No, I don't have that breakdown.</p> <p>16 Average.</p> <p>17 Q. Does anyone have that breakdown?</p> <p>18 A. No.</p> <p>19 Q. When you say you know average, what</p> <p>20 does that mean?</p> <p>21 A. In the reports I would get during the</p> <p>22 holiday season, it would give me the average card</p> <p>23 sold, so the average load amount. \$67. \$75.</p> <p>24 Q. And that would be -- what is your</p>

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<p>1 understanding of how that number is derived?</p> <p>2 A. Total number of cards versus total</p> <p>3 dollars loaded.</p> <p>4 Q. And that's totals or is it totals</p> <p>5 broken down by region or by store?</p> <p>6 A. It's the total. I mean there could</p> <p>7 be a breakdown by region, but I don't -- I could</p> <p>8 calculate the number, average card per region --</p> <p>9 Q. Sure.</p> <p>10 A. -- if that's what you mean. Because</p> <p>11 we have it broken down by -- I think dollars are</p> <p>12 on there, as well. But I'm talking about overall</p> <p>13 sales for a period, for a holiday season.</p> <p>14 Q. How accessible is that information to</p> <p>15 you?</p> <p>16 A. I mean I don't house the information</p> <p>17 on my terminal, my system.</p> <p>18 Q. If you went back to your office</p> <p>19 tomorrow and you said, "I want to know what we</p> <p>20 sold during Christmas season 2009," could you get</p> <p>21 that information in an hour?</p> <p>22 A. Maybe not an hour; maybe a day.</p> <p>23 Q. Okay. And what information</p> <p>24 specifically could you get? Could you get the</p>	<p>1 A. The sales, yes.</p> <p>2 Q. And the Card Genie, to your</p> <p>3 understanding, doesn't have a corollary with fees?</p> <p>4 A. Not that I'm aware of.</p> <p>5 Q. If you wanted to go into your office</p> <p>6 and find out how many cards were sold in 2007 or</p> <p>7 2006, would Card Genie do that?</p> <p>8 A. I can't answer that question.</p> <p>9 Q. Can you put those search parameters</p> <p>10 in?</p> <p>11 A. I don't do the search.</p> <p>12 Q. Can those search parameters be put</p> <p>13 in?</p> <p>14 A. I don't know. I don't know the</p> <p>15 system that well to say how far back you can go.</p> <p>16 Q. Okay. And even if Card Genie</p> <p>17 wouldn't be able to retrieve that information, do</p> <p>18 you believe that information is retrievable</p> <p>19 somewhere in the system?</p> <p>20 A. You'd need to ask technology. I</p> <p>21 don't want to speculate on that.</p> <p>22 Q. Do you have any knowledge of any</p> <p>23 customer complaints regarding gift cards or</p> <p>24 gift cards programs? Would that be within your</p>
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<p>1 total amount of cards sold?</p> <p>2 A. I would assume, yes.</p> <p>3 Q. Could you get the total amount of</p> <p>4 dollars loaded into those cards?</p> <p>5 A. I would assume, yes.</p> <p>6 Q. Could you get the total amount of</p> <p>7 fees collected for last year?</p> <p>8 A. No. It's not part of the same</p> <p>9 system.</p> <p>10 Q. What system is that part of?</p> <p>11 A. I don't know. That's a finance</p> <p>12 system. I'm just talking about the Card Genie you</p> <p>13 talked about earlier.</p> <p>14 Q. Oh, you could pull all of this out of</p> <p>15 the Card Genie?</p> <p>16 A. I can't.</p> <p>17 MR. HARVEY: Objection. What</p> <p>18 out of a Card Genie?</p> <p>19 BY MR. FODERA:</p> <p>20 Q. The information that we've been</p> <p>21 discussing about total sales and total volume and</p> <p>22 total load per -- average load per card, you could</p> <p>23 pull all of that -- that information can be pulled</p> <p>24 directly from the Card Genie?</p>	<p>1 responsibilities?</p> <p>2 A. I mean customer problem resolution is</p> <p>3 in my purview. But do I have any knowledge? I</p> <p>4 assume there's a customer complaint in here.</p> <p>5 That's about the only knowledge I have.</p> <p>6 Q. Okay. But my question -- and maybe</p> <p>7 it was inartfully phrased -- is there a position</p> <p>8 within TD Bank and/or Commerce Bank before it that</p> <p>9 would be responsible for knowing about customer</p> <p>10 complaints when customers have made complaints</p> <p>11 related to gift cards.</p> <p>12 A. I don't think specific to gift card.</p> <p>13 Q. Would that gift card program,</p> <p>14 complaints related to that from the public, be</p> <p>15 under the auspices of any other -- would</p> <p>16 complaints related to gift card be under the</p> <p>17 auspices of other products and who would get those</p> <p>18 complaints?</p> <p>19 A. Well, complaints generally would go</p> <p>20 to the front line management team of a customer.</p> <p>21 Now, whether or not that's centralized into a back</p> <p>22 room area, I mean it depends on what form the</p> <p>23 complaint came in. Letter, complaint letter would</p> <p>24 go -- you could probably have a record of a</p>

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<p>1 complaint letter. But there's not a complaint 2 department if that's what you mean. 3 Q. Okay. 4 A. We don't get a lot of complaints. 5 Q. But surely you get some. 6 A. Sure. 7 Q. And like any good organization you're 8 going to listen to your customers and you're going 9 to try and improve on your service. 10 A. We're all about service and 11 convenience. 12 Q. And being all about service and 13 convenience, you want to listen to the complaints 14 that your customers have? 15 A. Absolutely. 16 Q. And you want to know if those 17 complaints are being repeated system-wide? 18 A. True. 19 Q. You don't want them to just stay at 20 the first line level, do you? 21 A. No. 22 Q. So I guess my question is where are 23 those complaints consolidated so somebody knows 24 that they're system-wide?</p>	<p>1 Q. All right. And before Linda Verba? 2 A. She started it. 3 Q. Commerce didn't have a program? 4 A. It was a Commerce program. She's a 5 Commerce legacy employee. 6 Q. So this -- 7 A. I'm sorry, I don't want to say that 8 because it's not a hundred -- so she's managed it. 9 The gentleman that started it is deceased, so he's 10 not here. 11 Q. But this type of program has been in 12 effect since you've been employed with Commerce? 13 A. No. I don't know what year they 14 started the chairman service center. I want to 15 say early 2000. 16 Q. It's been in effect since before the 17 gift card program? 18 A. It could be right around the same 19 time. 20 Q. Fair enough. Now, would you expect 21 that if there was a systemic problem with 22 gift cards, whatever that problem was, that was 23 being reported to various branches, that it would 24 have been kicked up to this department?</p>
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<p>1 A. So the complaints that get bumped up, 2 what we call bump up -- 3 Q. Okay. 4 A. -- would go to the chairman's service 5 center. 6 Q. The chairman's service center. What 7 is the chairman's service center? 8 A. They handle the most escalated 9 complaints from customers -- 10 Q. What about -- 11 A. -- throughout the bank. 12 Q. Now, I'm not talking about one irate 13 person in Boca Raton. I'm talking about if you've 14 got twenty-seven people -- 15 A. A systemic issue? 16 Q. A systemic issue, yes. 17 A. I mean they monitor the complaint 18 tracking and letters that come in, so I would 19 assume it would be them. 20 Q. And who runs that department? 21 A. Right now? 22 Q. I'll take right now. 23 A. I mean it falls under Linda Verba. 24 You know that name.</p>	<p>1 A. Yes. 2 Q. I think I asked this -- 3 MR. FODERA: Please indulge me, 4 Counsel. 5 BY MR. FODERA: 6 Q. But I want to be clear. My 7 understanding is you have no information, 8 whatsoever, regarding why Vernon Hill at the end 9 of 2005 reinstituted the service fees. 10 A. He didn't institute at the end -- I'm 11 sorry -- 12 Q. Why they reinstituted. 13 A. Vernon Hill -- 14 Q. Nobody stopped it. 15 A. I don't know that Vernon Hill -- I 16 never said that Vernon Hill was involved in that. 17 Q. Oh, okay. 18 A. Vernon Hill stopped the fees in 19 January 2005. Based on this, Dennis DiFlorio 20 reinstituted the fee with Kevin Barry. 21 Q. Was Vernon Hill in charge of the bank 22 or the -- 23 A. Yeah. 24 Q. At that time. And other than this</p>

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<p>1 email, you have no information regarding this</p> <p>2 reinstitution of the fee at all?</p> <p>3 A. No. I mean other than the fact it</p> <p>4 was reinstituted.</p> <p>5 Q. I understand that. I want to cover</p> <p>6 this base as securely as I can. I want to know</p> <p>7 that I've covered that issue. You don't have any</p> <p>8 information at all?</p> <p>9 A. I was not involved in the</p> <p>10 reinstitution of the fee, no.</p> <p>11 Q. Who is Hannah Preble?</p> <p>12 A. "Hannah Preble." I want to say --</p> <p>13 don't hold me to this. Hannah Preble. I know the</p> <p>14 name.</p> <p>15 Q. Is she marketing or Marketwise?</p> <p>16 A. Oh. Oh, she's marketing from legacy</p> <p>17 Banknorth, I'm thinking.</p> <p>18 Q. What was Marketwise?</p> <p>19 A. Marketwise was the -- any</p> <p>20 marketing-type product or service or campaign that</p> <p>21 was issued under legacy Banknorth, it was a</p> <p>22 communication to the front line.</p> <p>23 MR. FODERA: Let's mark this</p> <p>24 as 4.</p>	<p>1 A. Same.</p> <p>2 Q. And Beth Hogan?</p> <p>3 A. Don't know.</p> <p>4 Q. If you weren't involved in the</p> <p>5 day-to-day operations of the gift bank card -- in</p> <p>6 November of 2008 you had the position you have</p> <p>7 now.</p> <p>8 A. I do. I did. Excuse me.</p> <p>9 Q. So why are you even getting this</p> <p>10 email?</p> <p>11 A. Because it's going to the stores.</p> <p>12 Q. Everything that goes to the stores</p> <p>13 comes through you?</p> <p>14 A. Yes.</p> <p>15 Q. Did you have any input into this?</p> <p>16 A. No.</p> <p>17 Q. Would you get one of these each year?</p> <p>18 A. I get them weekly. Marketwises I get</p> <p>19 weekly.</p> <p>20 Q. Fair comment. My question is it had</p> <p>21 to with gift bank (sic).</p> <p>22 A. Gift card?</p> <p>23 Q. Gift card sales and gift card</p> <p>24 promotions. Is this something you would expect to</p>
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<p>1 (Document received and marked</p> <p>2 for identification Plaintiffs' Exhibit</p> <p>3 Grimmer-4, Document Bates-stamped number</p> <p>4 TD000969 through TD000978, consisting of</p> <p>5 10 pages.)</p> <p>6 BY MR. FODERA:</p> <p>7 Q. Do you have that in front of you?</p> <p>8 A. Yes.</p> <p>9 Q. Just take a moment and just -- I just</p> <p>10 have a couple questions with regard to it, but I</p> <p>11 want you to look at it. You'll see in there TD977</p> <p>12 that we were discussing earlier. Maybe this is</p> <p>13 what you were talking about.</p> <p>14 A. I see that.</p> <p>15 Q. Is that what you were talking about</p> <p>16 earlier?</p> <p>17 A. No.</p> <p>18 Q. Okay. Let's just -- let's play</p> <p>19 identification game first. Stacey Perrotta, who</p> <p>20 is that?</p> <p>21 A. She is a field marketing manager.</p> <p>22 Q. Is she under you or someone else?</p> <p>23 A. No, she's under marketing.</p> <p>24 Q. And Jamie Triplett?</p>	<p>1 see at least on an annual basis?</p> <p>2 A. Yes.</p> <p>3 Q. This is not something that you would</p> <p>4 see weekly --</p> <p>5 A. No.</p> <p>6 Q. -- with regard to gift cards?</p> <p>7 A. No.</p> <p>8 Q. Just during maybe dads and grads and</p> <p>9 maybe the holiday season, is that fair?</p> <p>10 A. Big campaigns or pushes, yes.</p> <p>11 Q. Is Hannah Preble still there, if you</p> <p>12 know?</p> <p>13 A. I don't know.</p> <p>14 Q. Did you often have at the bank</p> <p>15 employee raffles for gift cards?</p> <p>16 A. Often, what do you mean by often?</p> <p>17 Q. Did it occur annually? Did it occur</p> <p>18 quarterly?</p> <p>19 A. I don't know exactly the frequency.</p> <p>20 We've had raffles for gift cards, yes.</p> <p>21 Q. Were you involved in that program at</p> <p>22 all other than just to get the facts?</p> <p>23 A. Not that I know of. That would be</p> <p>24 the WOW department.</p>



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<p>1 Q. Were you involved in the program that</p> <p>2 gave away gift cards for new accounts, get a \$25</p> <p>3 gift card?</p> <p>4 A. For grand openings.</p> <p>5 Q. Oh, does that still go on?</p> <p>6 A. Yes.</p> <p>7 Q. Tell me about that program.</p> <p>8 A. You come and open an account and</p> <p>9 legacy Commerce, from a legacy Commerce</p> <p>10 perspective, because they were the grand opening</p> <p>11 gurus, customers could get a gift when you open</p> <p>12 your account, 250 for a checking account, minimum</p> <p>13 of 250, and if you did that, you got a gift along</p> <p>14 with that, and one of the gifts was the gift card.</p> <p>15 Q. How much do you have to open now?</p> <p>16 A. 250 I want to say is the number</p> <p>17 still.</p> <p>18 Q. So they're giving you a 10 percent</p> <p>19 return right away?</p> <p>20 A. (Indicating.)</p> <p>21 Q. It's better than a toaster.</p> <p>22 A. It's better than a toaster. We've</p> <p>23 done toasters, though.</p> <p>24 Q. Do those cards have fees attached to</p>	<p>1 A. They load them, preload them.</p> <p>2 Q. When you give them out to a</p> <p>3 purchaser -- to a person who's opened a new</p> <p>4 account at a Commerce legacy opening, if you're</p> <p>5 not putting it in through Card Genie, can you tell</p> <p>6 who the purchaser was at some subsequent time?</p> <p>7 A. I don't know.</p> <p>8 Q. My understanding is you can --</p> <p>9 because you only sell to TD Bank or Commerce</p> <p>10 customers, you can tell who all your purchasers</p> <p>11 are of bank cards, of gift cards. Is that fair?</p> <p>12 A. Can I put it down on paper who they</p> <p>13 are? No.</p> <p>14 Q. Somebody can generate a report saying</p> <p>15 who bought the cards.</p> <p>16 A. I don't know if they can or not.</p> <p>17 Q. And the same question with regard to</p> <p>18 people who don't go through the Genie system, can</p> <p>19 you tell who purchased the cards --</p> <p>20 A. I don't know.</p> <p>21 Q. -- or who the cards were given to for</p> <p>22 opening a new account?</p> <p>23 A. I couldn't tell you who got a card as</p> <p>24 part of a new account opening, who that person</p>
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<p>1 them after thirteen months?</p> <p>2 A. They're the same product as we give</p> <p>3 to -- we sell, yes.</p> <p>4 Q. Do they come in a gift box?</p> <p>5 A. They do.</p> <p>6 Q. Do they go through the Card Genie</p> <p>7 system?</p> <p>8 A. They're preloaded.</p> <p>9 Q. What does that mean?</p> <p>10 A. They come to the bank from the</p> <p>11 processor with \$25 loaded on them.</p> <p>12 Q. So they don't go through the</p> <p>13 Card Genie system?</p> <p>14 A. Not by the store personnel.</p> <p>15 Q. Okay.</p> <p>16 A. I can't -- I'm not a hundred percent</p> <p>17 sure whether or not the processor actually</p> <p>18 processes them through -- did they use Card Genie?</p> <p>19 I don't know.</p> <p>20 Q. When you say the processor, who do</p> <p>21 you mean? The person who actually physically --</p> <p>22 the plastic manufacturer --</p> <p>23 A. Yeah.</p> <p>24 Q. -- who makes the card?</p>	<p>1 was.</p> <p>2 Q. When you say you, do you mean you</p> <p>3 personally or TD Bank?</p> <p>4 A. Me, personally.</p> <p>5 Q. What about TD Bank?</p> <p>6 A. I don't know if they could or not.</p> <p>7 Q. Do you know if they have the ability</p> <p>8 to go back in time and tell who they gave new</p> <p>9 card -- account holders --</p> <p>10 A. I don't know.</p> <p>11 Q. -- gift cards?</p> <p>12 A. I don't know.</p> <p>13 Q. And the other question, can you tell</p> <p>14 me if TD Bank can generate a report that can tell</p> <p>15 who all the purchasers of bank cards are?</p> <p>16 A. I can't tell you, no.</p> <p>17 Q. Who would know that information?</p> <p>18 A. Technology.</p> <p>19 Q. Who in technology?</p> <p>20 A. I don't know the current technology</p> <p>21 guy that runs the gift card systems. I'm sorry, I</p> <p>22 don't know.</p> <p>23 Q. Can you tell me if your best estimate</p> <p>24 is that since the institution of this program in</p>

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<p>1 2003, there's been more or less than a million 2 cards sold? 3 A. More. 4 Q. More or less than two million cards 5 sold? 6 A. My guess would be more. 7 Q. More or less than five million cards 8 sold? 9 A. I would say no. 10 Q. Somewhere between two and -- what 11 about three million? 12 MR. HARVEY: The witness used 13 the word guess. So I'd appreciate it if 14 you'd lay a foundation and find out if this 15 is pure speculation -- 16 THE WITNESS: This is pure 17 speculation. 18 MR. HARVEY: -- or maybe he has 19 some basis. 20 BY MR. FODERA: 21 Q. But you see the card reports -- 22 A. Yes. 23 Q. -- and you've seen them since you ran 24 the pilot program. So when you say guess, you're</p>	<p>1 Q. What do you mean? 2 A. I think it was \$3.50, and now it's 3 \$2.50, same as Commerce. 4 Q. Anything else? 5 A. That's all -- they didn't do -- 6 I'm sorry. They didn't have a box. They didn't 7 have the same packaging as we had. 8 Q. Anything else? 9 A. And they sold it at tellers, which we 10 talked about earlier. I think that's it. 11 Q. I don't think this name came up: 12 Chas Hermann. 13 A. Yeah, we talked about him. On email. 14 MR. FODERA: Let's take five 15 minutes. 16 (At this time, a recess was 17 taken.) 18 BY MR. FODERA: 19 Q. You told me earlier, I think you said 20 that you would comment on the gift card training 21 materials through emails. 22 A. My comment on gift card training 23 materials? 24 Q. When you got these gift card training</p>
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<p>1 really giving me an estimate, your best estimate 2 that over two million cards have been sold since 3 the institution of the program? 4 A. Best estimate, yeah. 5 Q. And what about over three million, or 6 is it somewhere in that number? 7 A. I would say somewhere in that number. 8 Q. Okay. You graduated from Ryan in '78 9 or '80? 10 A. '80. 11 Q. Was that one of the first classes? 12 A. No. 13 (Discussion held off the 14 record.) 15 BY MR. FODERA: 16 Q. Can you tell me about any substantive 17 changes, if you know, between the TD Bank card 18 program and the Commerce Bank card program when TD 19 took over Commerce? 20 A. I believe there was a purchase fee at 21 TD Banknorth that went away. 22 Q. Okay. 23 A. And their maintenance fee was 24 different.</p>	<p>1 materials, you would comment on them and you would 2 generally do it by email, you did it mostly by 3 email. Did I misunderstand you? 4 A. Yeah, my comment was the gift card, 5 we would send out gift card training via email for 6 store huddles. Remember we were talking about 7 store huddles? 8 Q. And would you comment on the 9 materials before they went to the employees? Is 10 that something you would do. 11 A. If I did, it would be via email I 12 think is what I said. 13 Q. Okay. 14 A. I can't say I never commented on a 15 training material. 16 Q. Do you have specific recollections of 17 commenting on gift card training materials? 18 A. No. 19 Q. You said earlier that -- just before 20 we broke, that for the gift cards that were used 21 when a person opened a new bank account and are 22 used when a person opens a new bank account, that 23 those gift cards are loaded -- come preloaded. 24 Right?</p>

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<p>1 A. Yes.</p> <p>2 Q. And that they're preloaded at the</p> <p>3 manufacturing site or someplace else. Where are</p> <p>4 they preloaded?</p> <p>5 A. I don't know who our card provider is</p> <p>6 today.</p> <p>7 Q. They're preloaded at the card</p> <p>8 provider?</p> <p>9 A. That's my recollection of how it</p> <p>10 works now, yes.</p> <p>11 Q. So how do you know -- if they're</p> <p>12 preloaded, is the -- when they're loaded, is that</p> <p>13 the issue date when the cash hits the card?</p> <p>14 A. I don't know.</p> <p>15 Q. Well, can we agree that when the cash</p> <p>16 hits the card in the bank and it goes through the</p> <p>17 Genie system, that's the issue date?</p> <p>18 A. For the one sold at the bank?</p> <p>19 Q. Yeah.</p> <p>20 A. Correct.</p> <p>21 Q. Okay. But you can't comment on</p> <p>22 whether or not the issue date is the date that</p> <p>23 it's preloaded at the manufacturer's on those</p> <p>24 cards that are used and given to customers for</p>	<p>1 as a teller, as a manager, as Jim Grimmer, I can</p> <p>2 go in and look and clarify exactly what the</p> <p>3 process or procedure is.</p> <p>4 Q. So this is the answer book?</p> <p>5 A. That's the answer guide.</p> <p>6 Q. And this answer guide has several</p> <p>7 different gyrations. I've got one 10-12-05 to</p> <p>8 11-17-05, and this has to do with gift card,</p> <p>9 11-18-05 to 12-12-05, and there's variances of</p> <p>10 regular overview. What would be the cause to</p> <p>11 generate a new gift card overview or WAG guide for</p> <p>12 gift cards?</p> <p>13 A. Yeah, it could just be the annual</p> <p>14 review: Yeah, nothing changed. It could be that</p> <p>15 something changed.</p> <p>16 Q. Without spending time, and I don't</p> <p>17 think that we need to, these were produced by</p> <p>18 counsel to me from TD Bank. Can you say with</p> <p>19 certainty that the WOW guide, the TD Bank Visa</p> <p>20 gift card overview, whichever that I'm looking at,</p> <p>21 is the answer guide for that time period that it</p> <p>22 pertains to with regard to gift cards?</p> <p>23 A. I'm sorry, you're going to have to</p> <p>24 repeat the question.</p>
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<p>1 opening new accounts?</p> <p>2 A. I cannot.</p> <p>3 Q. Who would know that information?</p> <p>4 A. Possibly Deb Calulo. I always say</p> <p>5 her name wrong.</p> <p>6 Q. We were looking at the materials, I</p> <p>7 showed you this and you immediately saw this and</p> <p>8 knew what it was.</p> <p>9 A. It's a WAG record.</p> <p>10 Q. A WAG record.</p> <p>11 A. W-A-G, WOW Answer Guide.</p> <p>12 Q. Wow Answer Guide. Tell me about the</p> <p>13 origins of the WOW Answer Guide and where it's</p> <p>14 used and how it's used and who it's used with.</p> <p>15 A. It's used throughout the entire bank.</p> <p>16 Q. Okay.</p> <p>17 A. Clarify that, legacy Commerce, it was</p> <p>18 used throughout the entire bank.</p> <p>19 Q. Okay.</p> <p>20 A. It was the record of customer facing</p> <p>21 procedures and policies.</p> <p>22 Q. What does that mean, customer facing</p> <p>23 procedures and policies?</p> <p>24 A. Any time you had a question as a CSR,</p>	<p>1 Q. What I'm trying to do here is</p> <p>2 short-circuit a little bit.</p> <p>3 A. Sure.</p> <p>4 Q. We can go through all of these</p> <p>5 different answer guides. What I guess I'm trying</p> <p>6 to ask you, if you will agree with the proposition</p> <p>7 that whichever WAG guide it is from whatever time</p> <p>8 period it is, that that is the policy and</p> <p>9 procedure with regard to gift cards for that time</p> <p>10 period.</p> <p>11 A. Yes.</p> <p>12 Q. At the bank.</p> <p>13 A. Yes.</p> <p>14 Q. And that people who worked for the</p> <p>15 bank could reasonably rely on the material in here</p> <p>16 as being correct and accurate information.</p> <p>17 A. Reasonably rely on it, yes.</p> <p>18 Q. Okay.</p> <p>19 MR. HARVEY: Counselor, may I</p> <p>20 add a clarification?</p> <p>21 MR. FODERA: Sure.</p> <p>22 MR. HARVEY: I sent you a</p> <p>23 letter yesterday that I identified that the</p> <p>24 date on the very first one is off by a few</p>



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<p>1 weeks.</p> <p>2 MR. FODERA: That's correct.</p> <p>3 MR. HARVEY: And that it also</p> <p>4 refers to it as a TD guide, and that's just</p> <p>5 a header, TD wasn't anywhere in the picture</p> <p>6 at the time of --</p> <p>7 MR. FODERA: And with that</p> <p>8 qualification. I realize that. I'm not</p> <p>9 playing hide the ball here. I'm just</p> <p>10 trying to move things along.</p> <p>11 BY MR. FODERA:</p> <p>12 Q. Who created WAG?</p> <p>13 A. I wasn't there. It was there before</p> <p>14 I got there.</p> <p>15 Q. It's been that long?</p> <p>16 A. (Indicating.)</p> <p>17 Q. Okay. And who is responsible for</p> <p>18 updating WAG?</p> <p>19 A. It falls under the WOW department.</p> <p>20 Q. And who is the head of the WOW</p> <p>21 department?</p> <p>22 A. Linda Verba.</p> <p>23 Q. She's got a lot of hats; Linda Verba.</p> <p>24 A. Yes, she does.</p>	<p>1 MR. HARVEY: I have a couple</p> <p>2 questions just to clarify a couple things.</p> <p>3 BY MR. HARVEY:</p> <p>4 Q. Mr. Grimmer, Mr. Fodera asked you</p> <p>5 about the issue date and how customers are to</p> <p>6 know -- how recipients of cards are to know the</p> <p>7 issue date or the date on which the card was sold</p> <p>8 for purposes of determining when this fee will</p> <p>9 kick in, the maintenance fee. And I'm referring</p> <p>10 to today, let's just start with today. Is there</p> <p>11 any way -- I believe you said it's not on -- the</p> <p>12 issue date is not stated on the card, itself,</p> <p>13 either the front or the back. Is there any way</p> <p>14 that a recipient of a card can figure out the</p> <p>15 issue date?</p> <p>16 A. I believe it's on giftcard.com, you</p> <p>17 would see the original loaded amount on the card.</p> <p>18 And if you call the 1-800 number, I think</p> <p>19 historically you can go through the history of</p> <p>20 transactions and they would show -- they would</p> <p>21 tell you the load date of the card and amount.</p> <p>22 Q. So you can go to the website or you</p> <p>23 can go to the 800 number?</p> <p>24 A. Yes.</p>
Page 227	Page 229
<p>1 MR. HARVEY: I will point out</p> <p>2 one other thing that is not in my letter</p> <p>3 that I came to fully understand today,</p> <p>4 which is that there was a WAG guide in 2004</p> <p>5 that we have been unable to -- that TD Bank</p> <p>6 has been unable to locate. So the earliest</p> <p>7 WAG guide we gave you begins in January of</p> <p>8 2005. There is a prior one, but we've been</p> <p>9 unable to locate it. Whether it was</p> <p>10 different or the same, I don't know.</p> <p>11 MR. FODERA: When you say</p> <p>12 there's a prior WAG guide, Counsel, do you</p> <p>13 mean there's a prior WAG guide for the</p> <p>14 gift card program?</p> <p>15 MR. HARVEY: Yes.</p> <p>16 MR. FODERA: Okay.</p> <p>17 MR. HARVEY: Yes.</p> <p>18 BY MR. FODERA:</p> <p>19 Q. And am I correct -- Deponent, am I</p> <p>20 correct that there's WAG guides for various</p> <p>21 procedures at the bank?</p> <p>22 A. Yes.</p> <p>23 MR. FODERA: Okay. I have no</p> <p>24 more questions.</p>	<p>1 Q. And has -- that's true today?</p> <p>2 A. Not as confident today that it's</p> <p>3 still there, but I know that it was because I</p> <p>4 bought cards myself so I know in the past it was.</p> <p>5 Q. Was it there when -- during Commerce</p> <p>6 Bank?</p> <p>7 A. Yes.</p> <p>8 Q. And you're just not sure whether</p> <p>9 that's true today or not?</p> <p>10 A. I haven't gone in and looked at it</p> <p>11 today.</p> <p>12 Q. Mr. Fodera asked about putting a</p> <p>13 sticker with the issue date on the card. Have you</p> <p>14 ever been tasked either at your current job at</p> <p>15 TD Bank or any time you were with TD Bank or</p> <p>16 Commerce Bank to study the issue of putting a</p> <p>17 sticker on the card with the issue date? Have you</p> <p>18 ever looked into that?</p> <p>19 A. Never.</p> <p>20 Q. Would it operationally -- from an</p> <p>21 operational standpoint do you -- are there any</p> <p>22 problems that you could see with a procedure where</p> <p>23 every time a card was sold, the customer service</p> <p>24 rep had to put a sticker with the issue date or</p>

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<p>1 sale date either on the front of the card, 2 operationally is there any -- is there anything 3 that would strike you or concern you about the 4 feasibility of doing that? 5 A. I don't know that it's practical to 6 do it. The card that you showed me earlier comes 7 with the sticker on it, so the store is not doing 8 the sticker part of it. Every time you add 9 another process to the process you're opening 10 yourself for error. So I couldn't manage that 11 they did it every single time. So I think that 12 would be the biggest obstacle. 13 MR. HARVEY: I have no other 14 questions. 15 BY MR. FODERA: 16 Q. Let me just follow up on that, if I 17 can. With regard to the telephoning or going on 18 giftcards.com, you said that it will tell you the 19 load date. 20 A. Yeah. 21 Q. Do you know exactly what it says? 22 Does it say this was the date the card was issued 23 or does it say this is a load date? 24 A. I don't know exactly what it says.</p>	<p>1 date? 2 Q. Yes. 3 A. Yes, they could do that. 4 Q. And that would be more convenient for 5 the customer to know when the gift card was 6 purchased, wouldn't it? 7 A. From a consumer's perspective I guess 8 it could be. 9 Q. Okay. And are you aware that -- of 10 any competitors that put the issue date on their 11 cards? 12 A. I am not. 13 Q. On stickers on their cards? 14 A. I am not. 15 Q. Are you aware of AmEx's process? 16 A. I am not. 17 MR. FODERA: That's it. 18 --- 19 (DEPOSITION CONCLUDED) 20 (4:16 p.m.) 21 --- 22 23 24</p>
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<p>1 Q. Okay. 2 A. It might say purchased amount and 3 have the date and the amount. 4 Q. But you don't know what it says? 5 A. I don't, no. It's been a long time 6 since I've gone there. 7 Q. You agree with me that now there's a 8 sticker on these cards? 9 A. Yeah. 10 Q. Currently. 11 A. Yes. 2009. 12 Q. And this sticker that's currently on 13 this card could have preprinted on it, issue date, 14 with a blank line next to it, correct? 15 A. Anything's possible to have 16 preprinted. 17 Q. There's no hindrance to having on 18 this sticker, purchase date, with a blank line, 19 correct? 20 A. No. 21 Q. And that blank line on the purchase 22 date could be filled out by the customer service 23 representative, 12-9 purchased, correct? 24 A. You're asking me could they put in a</p>	<p>1 2 3 4 5 I, JAMES C. GRIMMER, have read the 6 foregoing transcript of my deposition 7 given on Tuesday, March 9, 2010, consisting 8 of 232 pages, and it is true, correct, and 9 complete to the best of my knowledge, 10 recollection, and belief, except for the 11 list of corrections, if any, attached on a 12 separate sheet herewith. 13 14 15 16 17 JAMES C. GRIMMER 18 19 20 21 22 Witness 23 24</p>

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CERTIFICATE

I, FRANCINE K. GUOKAS, RPR, and  
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Pennsylvania, do hereby certify that the  
proceedings, evidence, and objections noted are  
contained fully and accurately in the notes taken  
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copy is a correct transcript of the same.

I further certify that I am not an  
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FRANCINE K. GUOKAS, RPR  
Notary Public

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